

RECORDATION NO. 9435 Filed 1425

FEB 9 1979 - 8 15 PM

INTERSTATE COMMERCE COMMISSION



CONTINENTAL BANK

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO • 231 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60693

RECORDATION NO. 9435 Filed 1425

FEB 9 1979 - 8 15 PM

INTERSTATE COMMERCE COMMISSION

February 7, 1979

9-0404028

NO. 10  
Date FEB 9 1979  
Fee \$10.00

H. Gordon Homme, Jr., Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

ICC Washington, D. C.

Dear Mr. Homme:

Pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended (codified in 49 U.S.C. § 11303), and the regulations of the Interstate Commerce Commission promulgated thereunder (codified in 49 C.F.R., Part 1116), we are transmitting for filing and recording originals or executed counterparts of the following documents:

1. Agreement and Assignment, dated as of January 30, 1979, by and among The First National Bank of Maryland, Sun Life Insurance Company of America, Assignors, and Continental Illinois National Bank and Trust Company of Chicago, Assignee, together with acknowledgements by National Railway Utilization Corporation and Whittaker Corporation (Berwick Forge & Fabricating Division).
2. Amendment to Conditional Sale Agreement [dated as of May 31, 1978], dated as of January 30, 1979, among National Railway Utilization Corporation and Continental Illinois National Bank and Trust Company of Chicago.
3. Amendment to Conditional Sale Agreement [dated as of October 27, 1978], among National Railway Utilization Corporation and Continental Illinois National Bank and Trust Company of Chicago.

Item number 1 assigns certain rights under:

- (a) a Conditional Sale Agreement dated as of May 31, 1978, among Whittaker Corporation (Berwick Forge &

Fabricating Division) and National Railway Utilization Corporation, filed with the Commission under Recordation number 9425-B on June 5, 1978, at 2:20 p.m.; and under

- (b) a Conditional Sale Agreement dated as of October 27, 1978, among the same parties, filed with the Commission under Recordation number 9425-E on October 27, 1978, at 1:00 p.m.,

which were originally assigned to the Assignors under:

- (c) on Agreement and Assignment dated as of May 31, 1978, between Whittaker Corporation (Berwick Forge & Fabricating Division) and the First National Bank of Maryland, filed with the Commission under Recordation number 9425-A on June 5, 1978, at 2:20 p.m.; and under
- (d) an Agreement and Assignment dated as of October 27, 1978, between the same parties, filed with the Commission under Recordation number 9425-F on October 27, 1978, at 1:00 p.m.

Item 2 is an amendment to item (a) described above. Item 3 is an amendment to item (b) described above.

The names and addresses of the parties to the transaction are listed below under the titles of the documents to which they are parties:

AGREEMENT AND ASSIGNMENT

The First National Bank of Maryland (Assignor)  
25 South Charles Street  
Baltimore, Maryland 21201

Sun Life Insurance Company of America (Assignor)  
Sun Life Building  
20 South Charles Street  
Baltimore, Maryland 21201

Continental Illinois National Bank and Trust  
Company of Chicago (Assignee)  
231 South LaSalle Street  
Chicago, Illinois 60604

AMENDMENT TO CONDITIONAL SALE AGREEMENT [dated as of  
May 31, 1978]

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National Railway Utilization Corporation (Vendee)  
1100 Centre Square  
1500 Market Street  
Philadelphia, Pennsylvania 19102

Continental Illinois National Bank and Trust Company  
of Chicago (Assignee of Vendor's rights)  
231 South LaSalle Street  
Chicago, Illinois 60693

AMENDMENT TO CONDITIONAL SALE AGREEMENT [dated as of  
October 27, 1978]

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National Railway Utilization Corporation (Vendee)  
1100 Centre Square  
1500 Market Street  
Philadelphia, Pennsylvania 19102

Continental Illinois National Bank and Trust Company  
of Chicago (Assignee of Vendor's rights)  
231 South LaSalle Street  
Chicago, Illinois 60604

The equipment covered by the Conditional Sale Agreements, items (a) and (b) above, to which the enclosed documents relate, is as follows:

(i) 53 70-ton, 50'6" Class XM Boxcars

Road numbers NSL 150051-150103 (both inclusive) (May 31, 1978 Agreement)

(ii) 35 70-ton 50'6" Class XM Boxcars

Road numbers NSL 150283-15031 (both inclusive)  
(October 27, 1978 Agreement)

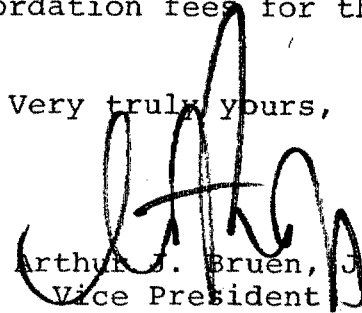
Items 1, 2 and 3 have not heretofore been recorded with the Interstate Commerce Division. Please accept for recordation two counterparts of each document, stamp the remaining counterparts with the appropriate recordation number and return them with your fee receipt and letter confirming receipt to my delivering messenger. The documents should be recorded under National Railway Utilization Corporation and cross-referenced to Pickens Railroad Company.



-4-

The necessary filing and recordation fees for these documents are submitted herewith.

Very truly yours,



Arthur J. Bruen, Jr.,  
Vice President

Continental Illinois National  
Bank and Trust Company of  
Chicago

Enclosures

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

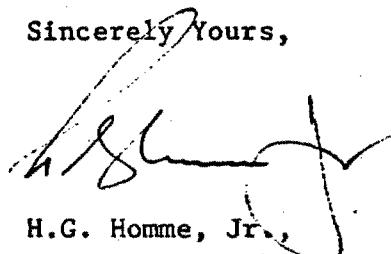
OFFICE OF THE SECRETARY

Arthur J. Bruen, Jr.  
Continental Bank  
Continental Illinois National Bank and Trust Company  
of Chicago  
231 South LaSalle  
Chicago, Illinois 60693

Dear Mr. Bruen:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on February 9, 1978 at 3:18 PM ,  
and assigned recordation number(s) : and 10080-B

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

FEB 9 1979 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

## AMENDMENT TO CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of January 30, 1979, among *this 9425-K is changed to 9425-W*  
NATIONAL RAILWAY UTILIZATION CORPORATION (the "Vendee") and  
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF  
CHICAGO (the "Vendor"),

W I T N E S S E T H:

WHEREAS, Whittaker Corporation (Berwick Forge & Fabricating Division) (the "Original Vendor") and the Vendee entered into a Conditional Sale Agreement, dated as of May 31, 1978 (the "Original Conditional Sale Agreement"), providing, among other things, for the sale by the Original Vendor and the purchase by the Vendee of certain railroad Equipment, as described therein, and for assignability of the Original Vendor's rights thereunder to payment of certain sums and to security title or interest in and to the Equipment and contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of the Equipment; and

WHEREAS, the Original Vendor and The First National Bank of Maryland (the "Assignee"), acting both as principal in its individual capacity and as agent for Sun Life Insurance Company of America ("Sun Life"), entered into an Agreement and Assignment, dated as of May 31, 1978 (the "Original Assignment"), pursuant to which the Original Vendor

assigned its above-mentioned rights under the Original Conditional Sale Agreement to the Assignee; and

WHEREAS, the Assignee, acting both as principal in its individual capacity and as agent for Sun Life, and the Vendor, are entering into an Agreement and Assignment, dated as of an even date herewith (the "Assignment"), pursuant to which the Assignee is assigning its above-mentioned rights under the Original Conditional Sale Agreement and the Original Assignment to the Vendor; and

WHEREAS, the Vendee and the Vendor wish to change the provisions for payment in the Original Conditional Sale Agreement to reflect the terms and conditions of the Assignment;

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration passing from the Vendor to the Vendee, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Amendment to Original Conditional Sale Agreement. The Original Conditional Sale Agreement is hereby amended, effective as of the date hereof, by deleting subparagraphs (a) and (b) of Article 4 and substituting the following paragraphs therefor:

"(a) Principal Payments - The principal sum of \$1,780,628 (hereinafter called the "Conditional Sale Indebtedness"), is payable by (i) one payment due and payable on November 30, 1978, in an amount equal to 10% of the Total Base Price, (ii) one payment due and payable on January 31, 1979, in an amount sufficient to reduce the unpaid balance of the Conditional Sale Indebtedness to \$1,500,000, (iii) followed by 31 consecutive quarterly installments of \$37,500, due and payable on the first day of February, May, August and November of each year, commencing on May 1, 1979, and (iv) a final payment of \$337,500 due and payable on February 1, 1987, on which date the entire unpaid balance of principal and interest shall be due and payable.

"(b) Interest Payments - Interest (computed on the basis of the actual number of days elapsed from the date of this Agreement divided by a year of three hundred and sixty (360) days) on the unpaid Conditional Sale Indebtedness shall be accrued and paid as follows:

"(i) during the period commencing with the date of this Agreement and ending with the last day of the 6th month after the date of this Agreement, at a fluctuating rate of interest equal at all times to the prime rate at The First National Bank of Maryland plus 1-3/4% per annum;

"(ii) during the period commencing with the first day of the 7th month after the date of this Agreement and ending with but not including January 30, 1979, at a fluctuating rate of interest equal to the prime rate at The First National Bank of Maryland plus 2-1/4% per annum; and

"(iii) during the period commencing with and including January 30, 1979, and ending with February 1, 1987, at a fluctuating rate of interest equal at all times to 115% of the sum of (A) the prime interest rate charged by Continental Illinois National Bank and Trust Company of Chicago plus (B) 1/2% per annum.

"Interest shall be payable on August 31, 1978, November 31, 1978, January 29, 1979, and quarterly thereafter, on the days specified for payment of principal in clauses (a)(iii) and (iv) of this Article, above. For purposes of the above, the prime rate of The First National Bank of Maryland shall mean the lowest unregu-



lated per annum corporate lending rate publicly quoted by The First National Bank of Maryland for borrowers from time to time on loans of 90-day maturity; and the prime rate of Continental Illinois National Bank and Trust Company of Chicago shall mean the interest rate charged by Continental Illinois National Bank and Trust Company of Chicago from time to time on 90-day unsecured loans made at its principal banking office in Chicago, Illinois, to substantial corporate borrowers of the highest credit standing. All increases or decreases in the prime rate at The First National Bank of Maryland or Continental Illinois National Bank and Trust Company of Chicago, as the case may be, shall be reflected immediately in the interest rate charged with respect to the unpaid Conditional Sale Indebtedness.

"The Vendee will pay interest, to the extent legally enforceable, at the rate of 12% per annum upon all sums remaining unpaid after the same shall have been due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding."

SECTION 2. Future References to Conditional Sale

Agreement. From and after the date hereof all references to this "Conditional Sale Agreement" in any and all agreements, instruments, conveyances, documents, notes, certificates, or writings of any kind or character in connection with the transaction described therein shall be deemed to mean the Original Conditional Sale Agreement, as amended by this Agreement.

SECTION 3. Representations and Warranties. The representations and warranties of the Vendee contained in the Original Conditional Sale Agreement are hereby repeated and, by this reference, incorporated herein.

SECTION 4. Ratification by Vendee. As hereby amended,  
the Original Conditional Sale Agreement is in all respects  
ratified and confirmed by the Vendee.

IN WITNESS WHEREOF, the parties hereto have executed  
or caused this instrument to be executed all as of the date  
first above written.

NATIONAL RAILWAY UTILIZATION  
CORPORATION

[Corporate Seal]

By Charles P. Tumbak  
Vice President

ATTEST:

William E. Turner  
Asst. Secretary

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO

[Corporate Seal]

By Theodosia Lymann  
and Vice President

ATTEST:

Paul C. Carr  
Banking Officer

By [Signature]  
Vice President

*State of Pa. )*  
*County of Phila. )*

SS:

I HEREBY CERTIFY, that on this 29<sup>th</sup> day of Jan., 1979, before the subscriber, a Notary Public in and for said City and State, personally appeared Charles P. Tumbarello, who, being by me duly sworn, says that he is a Vice President of NATIONAL RAILWAY UTILIZATION CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 29<sup>th</sup> day of January, 1979.

*Darlene Marquette*  
Notary Public

[Notarial Seal]

My Commission expires:

/ DARLENE MARQUETTE  
Notary Public, Phila., Phila. Co.  
My Commission Expires Sept. 13 1982

STATE OF ILLINOIS     )  
                              )  
COUNTY OF C O O K    ) SS:

I HEREBY CERTIFY, that on this 30th day of January, 1979, before the subscriber, a Notary Public in and for said County and State personally appeared THEODOSIA FITZMORRIS who, being by me duly sworn, says that <sup>SECOND</sup> he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal, this 30th day of January, 1979.

Lillian Hudson  
Notary Public

[Notarial Seal]

My Commission expires:

10-11-82

STATE OF ILLINOIS   )  
                              )   SS:  
COUNTY OF C O O K   )

I HEREBY CERTIFY, that on this 30th day of January, 1979, before the subscriber, a Notary Public in and for said County and State personally appeared Arthur J. Bruen, Jr., who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal, this 30th day of January 1979

Eileen Nielson  
Notary Public

[Notarial Seal]

My Commission expires: 10 - 11 - 82

MAR 5 1980 - 2 50 PM

~~AMENDMENT TO INTERSTATE COMMERCE COMMISSION~~  
AMENDMENT TO CONDITIONAL SALE AGREEMENT dated  
as of February 27, 1980 (the "Amendment"), by and between  
NATIONAL RAILWAY UTILIZATION CORPORATION (the "Vendee") and  
THE FIRST NATIONAL BANK OF MARYLAND ("FNB"), both in its  
individual capacity and as agent for SUN LIFE INSURANCE  
COMPANY OF AMERICA ("Sun Life").

WHEREAS, the Vendee and Whittaker Corporation  
(Berwick Forge & Fabricating Division) (the "Builder")  
entered into a Conditional Sale Agreement dated as of March 30 ,  
1979 (the "Conditional Sale Agreement") providing for the  
purchase by the Vendee of certain railroad equipment described  
in Exhibit A attached thereto (the "Equipment"); and

WHEREAS, pursuant to an Agreement and Assignment  
dated as of March 30, 1979 (the "Agreement and Assignment"),  
and in accordance with the terms of the Conditional Sale Agree-  
ment Purchase Commitment Agreement dated as of May 31, 1978  
(the "Agreement"), the Builder assigned to FNB, both as  
principal and as agent for Sun Life, all of its right, title  
and interest (but none of its obligations) in and under the  
Conditional Sale Agreement; and

WHEREAS, the Conditional Sale Agreement and the  
Agreement and Assignment were filed and recorded with the  
Interstate Commerce Commission on March 30 , 1979 and assigned  
recordation numbers 9425-K and 9425-L ,  
respectively; and

WHEREAS, in accordance with Amendment No. 1 to the Conditional Sale Agreement Purchase Commitment Agreement dated as of February 11, 1980 ("Amendment No. 1"), NRUC and FNB wish to amend certain provisions of the Conditional Sale Agreement relating to interest charges and the repayment of the conditional sale indebtedness;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Paragraph (a) of Article 4 of the Conditional Sale Agreement is hereby amended by deleting such paragraph (a) in its entirety and substituting in lieu thereof the following:

"(a) Principal Payments - The principal sum of \$1,452,670 (hereinafter called the "Conditional Sale Indebtedness"), payable by (i) one payment on the last day of the 6th month after the date of this Agreement in an amount equal to 10% of the Total Base Price, (ii) followed by quarterly installments in the amount of \$32,494 commencing on December 31, 1979 and payable on the last day of every third month thereafter until January 15, 1981, (iii) followed by the final payment of the entire unpaid Conditional Sale Indebtedness and interest thereon on or before January 15, 1981."

2. Paragraph (b) of the Conditional Sale Agreement is hereby amended by deleting such paragraph (b) in its entirety and substituting in lieu thereof the following:

"(b) Interest Payments - Interest (computed on the basis of the actual number of days elapsed from the date of this Agreement divided by a year of three hundred sixty (360) days) on the unpaid Conditional Sale Indebtedness shall be accrued and paid as follows:

(i) during the period commencing with the date of this Agreement and ending with the last day of the sixth month after the date of this Agreement, an annual rate of interest equal at all times to the prime rate at The First National Bank of Maryland, plus 1 3/4% per annum;

(ii) on the first day of the seventh month after the date of this Agreement and ending on the last day of the twelfth month after the date of this Agreement, at an annual rate of interest equal to the prime rate at The First National Bank of Maryland, plus 2 1/4% per annum; and

(iii) from and after the first day of the thirteenth month after the date of this Agreement, and until the unpaid Conditional Sale Indebtedness is repaid in full, at an annual rate of interest equal to the greater of (x) 15% or (y) 2 1/2% plus the prime rate at The First National Bank of Maryland.

Interest shall be payable quarterly, commencing on the last day of the third month following the date of this Agreement and continuing thereafter on the last day of every third month until maturity on January 15, 1981, when all unpaid and accrued interest shall be due and payable. For purposes of the above, the prime rate shall mean the lowest per annum corporate lending rate publicly quoted by The First National Bank of Maryland for commercial borrowers from time to time on loans of 90-day maturity. All increases or decreases in the prime rate at The First National Bank of Maryland shall be reflected immediately in the interest rate charged with respect to the unpaid Conditional Sale Indebtedness.

The Vendee will pay interest, to the extent legally enforceable, at the greater of the rate provided above or the rate of



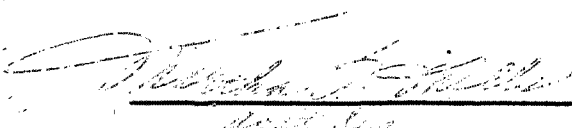
18% per annum upon all matters remaining unpaid after the same shall have been due and payable pursuant to the terms hereof, or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding."

In all other respects, the Conditional Sale Agreement shall remain in full force and effect without amendment or modification.

IN WITNESS WHEREOF, the parties have executed this Amendment on the dates specified in the acknowledgments attached hereto, effective as of the date and year first above written.

ATTEST:

NATIONAL RAILWAY UTILIZATION  
CORPORATION

  
[Corporate Seal]

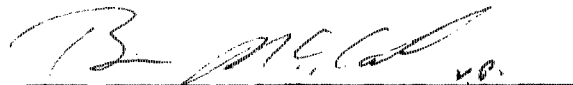
By 

THE FIRST NATIONAL BANK OF  
MARYLAND

  
[Corporate Seal]

By   
VICE PRESIDENT

THE FIRST NATIONAL BANK OF  
MARYLAND, as Agent for  
Sun Life Insurance Company  
of America

  
[Corporate Seal]

By   
VICE PRESIDENT

*State of Pa.* )  
*County of Philadelphia* ) SS:

I HEREBY CERTIFY, that on this *fourth* day of February, 1980, before the subscriber, a Notary Public in and for said City and State, personally appeared *Charles E. Hunsbaker*, who, being by me duly sworn, says that he is a Vice President of National Railway Utilization Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this *fourth* day of February, 1980.

*Bernard McWilliams*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires:

BERNARD MCWILLIAMS  
Notary Public, Phila., Phila. Co.  
My Commission Expires May 10, 1982

*State of Maryland* )  
*City of Baltimore* ) SS:

I HEREBY CERTIFY, that on this *28* day of February, 1980, before the subscriber, a Notary Public in and for the State of Maryland, personally appeared Arthur E. Jones, Jr., who, being by me duly sworn, says that he is a Vice President of The First National Bank of Maryland, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this *28* day of February, 1980.

*Margaret Schaefer*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: July 1, 1982

*State of Maryland* ) SS:  
*City of Baltimore*

I HEREBY CERTIFY, that on this *28* day of February, 1980, before the subscriber, a Notary Public in and for the State of Maryland, personally appeared ARTHUR E. JONES, JR., who being by me duly sworn, says that he is a Vice President of The First National Bank of Maryland, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation acting by authority of its Board of Directors in its capacity as the duly appointed and authorized agent of Sun Life Insurance Company of America, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this *28* day of February, 1980.

*Margaret Schaefer*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: July 1, 1982